IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

ARBITRATION PETITION NO.395 OF 2006

Arun K. Pandey. ...Petitioner

vs.

Madanlal Gupta. ...Respondent.

Mr.Z.Andhyarujina i/b. M/s.Thakordas & Madgavkar, for Petitioner.

Mr.Sanjay Jain i/b. M/s.Vinod Mistry & Co. for Respondent.

CORAM: D.K.DESHMUKH,J.

DATED: 21st November,2006..

P.C.:-

1. By this petition, the petitioner challenges the award made by the sole Arbitrator dated 5th August,2005. So far as validity of the award is concerned, the award appears to have been made without following the procedure and without complying the principles of natural justice. It is evident from the award that the learned Arbitrator has recorded the evidence without satisfying himself that the statement of claim has been served on the petitioner. It appears that

subsequently he realised that the statement of claim has not been served on the petitioner, and therefore, he has directed the claimant to serve the statement of claim on the petitioner. The learned Arbitrator himself did not address any communication in that regard instead he left it to the claimant to do so. The claimant has forwarded the copy of the statement of claim alongwith the covering letter. But the covering letter does not inform the petitioner that if he fails to appear before the learned Arbitrator on 5.8.2005 the Arbitrator will proceed ex-parte against him and shall make the award. Obviously, without informing the petitioner that his failure to appear before the learned Arbitrator would result in Arbitrator to proceed ex-parte against him and to make the Award, the Arbitrator could not have made ex-parte Award. For this sole reason the Award is liable to be set aside.

2. It is further to be seen that all the proceedings that had taken place before the learned Arbitrator in relation to the leading evidence were non-est because those proceedings had taken place without serving on the petitioner a copy of the statement of claim. Admitted position is that when the copy of the statement of claim was forwarded to the petitioner alongwith the letter dated 20.7.2005 neither the copy of the evidence recorded was forwarded nor the petitioner was informed that the evidence has already been recorded by the

learned Arbitrator. If the recording of the evidence without serving copy of the statement of claim on the petitioner is non-est, obviously it will not become valid only after serving copy of the statement of claim on the petitioner. The learned Arbitrator has based his Award on the evidence that has been recorded by him even without serving copy of the statement of claim on the petitioner. Thus, in my opinion, the Award is unfair and has been made in breach of the principles of natural justice and therefore, is liable to be set aside.

3. There was some debate before me on the question whether the petition is barred by the law of limitation. But the learned Counsel appearing for respondent states that the respondent gives up that point.

4. In this view of the matter therefore, the petition succeeds and is allowed. The Award impugned in the petition is set aside. The respondent is directed to pay cost of this petition to the petitioner as incurred by the petitioner.

5. The learned Counsel appearing for petitioner states that the petitioner will communicate to the Prothonotary and Senior Master of this Court his permanent address where the communication can be addressed to him by the respondent, within one week from

today and that a copy of that communication will be sent to the respondent and his lawyer. The statement is accepted.